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THE GEO GROUP, INC., CITY OF ADELANTO,
CAMPOS, and DIAZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OMAR ARNOLDO RIVERA
MARTINEZ; ISAAC ANTONIO
LOPEZ CASTILLO; JOSUE
VLADIMIR CORTEZ DIAZ; JOSUE
MATEO LEMUS CAMPOS;
MARVIN JOSUE GRANDE
RODRIGUEZ; ALEXANDER
ANTONIO BURGOS MEJIA; LUIS
PEÑA GARCIA; JULIO CESAR
BARAHONA CORNEJO, as
individuals,

Plaintiffs,

v.

THE GEO GROUP, Inc., a Florida
corporation; the CITY OF
ADELANTO, a municipal entity; GEO
LIEUTENANT DIAZ, sued in her
individual capacity; GEO
SERGEANT CAMPOS, sued in his
individual capacity; SARAH JONES,
sued in her individual capacity; THE
UNITED STATES OF AMERICA;
CORRECT CARE SOLUTIONS,
INC.; and DOES 1-10, individuals,

Defendants.

Case No. 5:18-cv-01125-SP

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE
1 TO EXCLUDE EVIDENCE OF
PLAINTIFF MARTINEZ'S
FELONY CONVICTIONS**

Pretrial Conference

Date: January 21, 2020

Time: 10:00 a.m.

Ctrm: 3

Trial date: February 3, 2020

Time: 9:00 a.m.

Magistrate

Judge: Honorable Sheri Pym

Defendants THE GEO GROUP, INC., CITY OF ADELANTO, CAMPOS,
and DIAZ hereby oppose Plaintiffs' Motion in Limine to exclude evidence of

1 Plaintiff Rivera Martinez's felony convictions. While the underlying nature of the
 2 convictions are not admissible in federal court absent Plaintiffs opening the door to
 3 those facts, the fact that Plaintiff Martinez is a convicted felon is relevant for
 4 impeachment and it goes to his credibility.

5 ARGUMENT

6 **I. FELONY CONVICTIONS ARE ADMISSIBLE FOR** 7 **IMPEACHMENT.**

8 Under Federal Rule 609(a)(1)(A), evidence of a conviction for a crime
 9 punishable for more than one year must be admitted, subject to Rule 403, in a civil
 10 case in which the witness is not a defendant – which Plaintiffs acknowledge but,
 11 nevertheless, argue Plaintiff Martinez's convictions should be excluded. However,
 12 the factors Plaintiff cites in determining whether the crime is admissible go to
 13 whether the nature of the crime should be admitted, and they derive from criminal
 14 cases in which the defendant's liberty is at stake. (*See* Pl's Mot'n [Doc. 148] at 6-7,
 15 citing inter alia, *United States v. Hursh*, 217 F.3d 761, 768 (9th Cir. 2000).)
 16 Defendants have already agreed to exclude any reference to the nature of Plaintiff
 17 Martinez's underlying convictions for sexual assault/rape and theft.

18 Moreover, Rule 608(b) permits any questions on cross-examination that
 19 relate to specific instances of misconduct in the witness's past, including but not
 20 limited to serious allegations like theft, so long as the evidence of misconduct is
 21 probative of the witness's character for truthfulness or untruthfulness, not offered to
 22 prove propensity, and not offered to prove that the person acted in accordance with
 23 that character trait on a particular date and time. Here, Defendants have agreed to
 24 elicit sanitized testimony related to Plaintiff Martinez's convictions for purposes of
 25 impeachment and credibility only.

26 Additionally, while Plaintiff Martinez argues his convictions are over 10
 27 years old, he admits that his seven year sentence ended less than 10 years ago
 28 (2013), which "put[s] these convictions within the ambit of Rule 609(a)." (Pl's

1 Mot'n [Doc. 148] at 1, 4.)

2 Plaintiffs also argue that Defendants Diaz and Campos had no knowledge of
3 his felony convictions at the time of the incident. (Pl's Mot'n [Doc. 148] at 6.) But
4 this is not an officer-involved shooting case in which the fact of the suspect's
5 dangerousness is offered to justify the use of force. Defendants do not contend that
6 Lt. Diaz or Sgt. Campos knew of Martinez's felony convictions. But they are not
7 offered to show Plaintiff Martinez is dangerous; instead, the bare fact of his felony
8 conviction alone would be used to impeach his credibility on cross-examination.

9 Plaintiff Martinez contends that crimes of violence are more prejudicial and
10 less probative of veracity. (Pl's Mot'n [Doc. 148] at 7.) But, again, Defendants do
11 not seek to introduce the fact that Plaintiff was convicted specifically of sexual
12 assault/rape or theft. Instead, as mentioned above, Defendants merely seek to elicit
13 testimony that Plaintiff Martinez has two felony convictions.

14 Finally, Plaintiff Martinez contends that if his felonies are introduced, he will
15 need to present evidence that he maintains his innocence. (Pl's Mot'n [Doc. 148] at
16 8.) However, whether or not Plaintiff Martinez was innocent of the crimes of
17 sexual assault and theft has already been determined by a court or jury, which is
18 why he was convicted of these crimes. Thus, it is completely unnecessary to present
19 evidence of Plaintiff Martinez's opinion regarding his innocence. Even if this
20 Court were to permit Plaintiff Martinez to offer the opinion that he was innocent,
21 this single statement would consume a *negligible* amount of time at trial.

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1 **II. CONCLUSION.**

2 For the reasons cited above, Plaintiffs' motion should be denied and
3 Defendants should be permitted to elicit testimony regarding the fact that Plaintiff
4 Martinez has been convicted of two felonies to impeach his credibility.

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6 Dated: January 7, 2020

BURKE, WILLIAMS & SORENSEN, LLP

7
8 By: /s/ Susan E. Coleman

9 Susan E. Coleman
Carmen M. Aguado

10 Attorneys for Defendants
11 THE GEO GROUP, INC., CITY OF
12 ADELANTO, CAMPOS, and DIAZ
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